

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

ROY TRANTHAM,

Plaintiff,

v.

FORD MOTOR COMPANY and FORD
MOTOR COMPANY CARIBBEAN, INC.,
Defendants

CIVIL NO. 1998/140-M

TO: Lee J. Rohn, Esq.
Andrew C. Simpson, Esq.
Britain H. Bryant, Esq. & Nathania Bates, Esq.

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

THIS MATTER came for consideration on Plaintiff's Motion for Reconsideration. No response is required.

Plaintiff's motion seeks reconsideration of the Order dated May 29, 2001 which compelled Ford to produce certain documents and denied Plaintiff's motion as to others. Plaintiff argues that further to the court's finding that he made a prima facie showing of fraud, he was *per se* entitled to all documents in which Ford had claimed attorney-client or work product privilege.

As stated in *In Re: Grand Jury Subpoena*, 223 F.3d 213, 217 (3d Cir. 2000):

This court has recognized the importance of the attorney-client privilege and has emphasized that the crime-fraud exception applies only when the legal advice 'gives direction for the commission of future fraud or crimes.'

Haines v. Ligget Group, Inc., 975 F.2d 81, 90 (3d Cir. 1992). Thus to invoke the exception the Government must make a prima facie showing that (1) the client was committing or intending to commit a fraud or crime, see *id* at 95, and (2) the attorney-client communications were in furtherance of that alleged crime or fraud. See e.g. *In Re: Grand Jury Investigation* (Schroeder), 842 F.2d 1223, 1226 (11th Cir. 1987); *United States v. Horvath*, 731 F.2d 557, 562 (8th Cir. 1984).

See also, *Prudential Ins. Co. of America v. Massaro*, 2000 WL 1176541 (D.N.J. 8/11/00):

...to subject the attorney-client communications to disclosure 'they must actually have been made with an intent to further an unlawful act.' *White* 877 F.2d at 172. Moreover, a logical link must exist between the privileged communication and the proposed crime or fraud; it must be the advice that leads to the deed.' *Haines v. Ligget GP., Inc.*, 975 F.2d 81, 91 (3d Cir. 1992); Geoffrey W. Hazard, Jr. and W. William Hodges, *THE LAW OF LAWYERING* § 1.6:104 at 147 ("the communications must actually contribute to the criminal activity, not merely provide evidence of it")...

In any event, the Court considered existence of the crime-fraud exception upon review of the submitted documents (*U.S. v. Zolin*, 941 U.S. 554, 567). As stated in the May 29, 2001 Order upon review of such documents, the Court found no basis for application of the crime-fraud exception. Accordingly, it is hereby;

ORDERED that the Plaintiff's Motion for Reconsideration is DENIED.

Trantham v. Ford Motor Co. et al.
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ENTER:

Dated: June 13, 2001

_____/s/_____
JEFFREY L. RESNICK
U.S. MAGISTRATE JUDGE

ATTEST:
WILFREDO MORALES
Clerk of Court

By:_____
Deputy Clerk